

REMARKS

The Applicants have carefully reviewed the Examiner's Answer mailed October 30, 2007 and offer the following remarks.

The Applicants hereby request that prosecution be reopened before the Primary Examiner. Specifically, this response under 37 C.F.R. §1.111 addresses, and is relevant to, the new grounds of rejection issued in the Examiner's Answer mailed October 30, 2007. The Applicants submit that this request and response comply with 37 C.F.R. § 41.39(b)(1).

Claims 1-6, 9-14, 17-22, and 26-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ricci* in view of *Ferguson*. The Applicants respectfully traverse the rejection.

According to Chapter 2143.03 of the M.P.E.P., in order to "establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." The Applicants submit that neither *Ricci* nor *Ferguson*, either alone or in combination, discloses all the features recited in claims 1-6, 9-14, 17-22, and 26-29. More specifically, claim 1 recites a method for generating revenue in a peer-to-peer file delivery network comprising, among other features, "periodically sending the subscription-based content to each respective subscribing client node." Claim 17 includes similar features. The Applicants submit that none of the references, either alone or in combination, disclose periodically sending subscription-based content to a subscribing client node. In maintaining the rejection, the Patent Office asserts that *Ricci* discloses this feature at paragraph [0040]. (See Final Office Action mailed March 8, 2006, page 6). The Applicants respectfully disagree. At most, the cited portion of *Ricci* discloses that during the transfer of digital media, a network acts like a peer-to-peer network without requiring a central server. (See *Ricci*, paragraph [0040]). However, no mention is made of periodically sending subscription-based content to a subscribing client node. Furthermore, the Applicants have reviewed the remainder of the reference and submit that nowhere does *Ricci* disclose or suggest this feature. Likewise, the Applicants have reviewed *Ferguson* and submit that *Ferguson* does not disclose periodically sending subscription-based content to a subscribing client node.

Claim 1 also recites "charging a fee to providers of the subscription-based content for serving the subscription-based content." Claim 17 includes similar features. The Applicants submit that none of the references, either alone or in combination, disclose charging a fee to providers of the subscription-based content for serving the subscription-based content. As

correctly pointed out by the Patent Office, *Ricci* does not disclose this feature. (See Examiner's Answer mailed October 30, 2007, page 4). Similarly, *Ferguson* does not disclose this feature. Nevertheless, the Patent Office supports the rejection by stating that *Ferguson* discloses this feature at col. 4, ll. 53-60. (See Examiner's Answer mailed October 30, 2007, page 4). The Applicants respectfully disagree. While the cited portion of *Ferguson* does disclose levying fees against third party content owners for executing a transaction, *Ferguson* does not disclose charging a fee for subscription-based content. (See *Ferguson*, col. 4, ll. 53-60). Likewise, the Applicants have reviewed the remaining portions of *Ferguson* and submit that nowhere does the reference disclose this feature. Accordingly, for at least this reason, claims 1 and 17 are patentable over the cited references. Similarly, claims 2, 4-6, 18, and 20-22, which ultimately depend from claim 1 or 17, are patentable for at least the same reasons along with the novel features recited therein.

Claim 9 recites a system for generating revenue in a peer-to-peer file delivery network comprising, among other features, "means for enabling decentralized downloads of subscription-based content that client nodes of the multiple client nodes subscribe to in order to receive periodic updates." Claim 27 includes similar features. The Applicants respectfully submit that none of the references, either alone or in combination, disclose a means for enabling downloads of subscription-based content in order to receive periodic updates. As detailed above, none of the references, either alone or in combination, disclose periodically sending subscription-based content to a subscribing client node. Therefore, it follows that neither reference, either alone or in combination, can disclose receiving periodic updates nor a means for enabling downloads of subscription-based content in order to receive periodic updates.

Claim 9 also recites that "a fee is charged to providers of subscription-based content for serving the subscription-based content to the client nodes." Claim 27 includes similar features. As detailed above, none of the references, either alone or in combination, disclose charging a fee to providers of the subscription-based content for serving subscription-based content. As such, for this reason and the reason noted above, claims 9 and 27 are patentable over the cited references. Similarly, claims 10 and 12-14, which ultimately depend from claim 9, are patentable for at least the same reasons along with the novel features recited therein.

Claim 26 recites a method for generating revenue in a peer-to-peer file delivery network, comprising, among other features, "periodically sending the subscription-based content to each

respective subscribing client node.” As detailed above, none of the references, either alone or in combination, disclose periodically sending subscription-based content to a subscribing client node. Claim 26 also recites “charging a fee to providers of the subscription-based content for serving the subscription-based content.” As previously discussed, neither *Ricci* nor *Ferguson*, either alone or in combination, discloses charging a fee to providers of the subscription-based content for serving the subscription-based content.

Moreover, claim 26 recites enabling clients to become affiliate servers and paying affiliate server owners “a percentage of the fee charged for serving files.” The Applicants submit that none of the cited references, either alone or in combination, disclose paying affiliate server owners a percentage of a fee charged for serving a file. As correctly pointed out by the Patent Office, *Ricci* does not disclose this feature. (See Examiner’s Answer mailed October 30, 2007, page 6). Likewise, *Ferguson* does not disclose this feature. Nonetheless, the Patent Office supports the rejection by asserting that *Ferguson* discloses this feature at col. 15, ll. 7-11, col. 4, ll. 53-60, col. 14, ll. 30-31, and col. 9, ll. 2-9. (See Examiner’s Answer mailed October 30, 2007, pages 6 and 7). The Applicants respectfully disagree. At most, the cited portions of *Ferguson* disclose levying fees against third party content owners for executing a transaction and that a server may charge or pay a user or a content provider a fee. (See *Ferguson*, col. 4, ll. 58-60 and col. 9, ll. 2-5; see also figure 2, step 240). However, nowhere do the cited portions, nor anywhere else in *Ferguson* for that matter, disclose paying an affiliate server owner a percentage of a fee charged for serving files. For this reason and the reasons noted above, claim 26 is patentable over the cited references and the Applicants request that the rejection be withdrawn.

Claim 3, which depends from claim 1, recites enabling clients to become affiliate servers and paying affiliate server owners “a percentage of the fee charged for serving files.” Claim 11, which depends from claim 9, and claim 19, which depends from claim 17, include similar features. As detailed above, none of the cited references, either alone or in combination, disclose paying affiliate server owners a percentage of a fee charged for serving a file. For this reason and the reasons noted above with reference to claims 1, 9, and 17, claims 3, 11, and 19 are patentable over the cited references and the Applicants request that the rejection be withdrawn.

Claim 28 recites a system for generating revenue comprising, among other features, charging a fee “to providers of the subscription-based content for serving the subscription based content to the client nodes.” As detailed above, none of the references, either alone or in

combination, disclose charging a fee to providers of the subscription-based content for serving subscription-based content. As such, claim 28 is patentable over the cited references and the Applicants request that the rejection be withdrawn.

Claim 29 recites a server node comprising, among other features, charging a fee “to providers of the subscription-based content for providing the subscription-based content to the client node.” As mentioned above, neither *Ricci* nor *Ferguson*, either alone or in combination, discloses charging a fee to providers of the subscription-based content for serving subscription-based content. Claim 29 also recites that a client node may become an affiliate server such that an affiliate server owner “is paid a percentage of a fee charged for content delivery.” As mentioned above, none of the references, either alone or in combination, disclose paying affiliate server owners a percentage of a fee charged for serving a file. For this reason and the reasons noted above, claim 29 is patentable over the cited references and the Applicants request that the rejection be withdrawn.

In addition, claims 7, 8, 15, 16, and 23-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Ricci* in view of *Ferguson* and further in view of the *Applicants’ Related Art*. The Applicants respectfully traverse the rejection. Regarding claims 7, 8, 15, 16, 23, and 24, as detailed above, claims 1, 9, and 17, the base claims from which claims 7, 8, 15, 16, 23, and 24 ultimately depend, are patentable over *Ricci* and *Ferguson*. Moreover, the *Applicants’ Related Art* does not overcome the previously noted shortcomings of both *Ricci* and *Ferguson*. Therefore, claims 7, 8, 15, 16, 23, and 24 are patentable over the cited references and the Applicants request that the rejection be withdrawn.

Claim 25 recites a method for providing subscription-based decentralized file downloads to client nodes in a peer-to-peer public network comprising, among other features, “periodically delivering the particular content files to respective clients nodes that subscribed to the particular content files.” As detailed above, neither *Ricci* nor *Ferguson*, either alone or in combination, discloses periodically delivering content files to clients that subscribed to particular client files. In addition, the *Applicants’ Related Art* does not disclose this feature. Accordingly, claim 25 is patentable over the cited references.

Claims 1-27 were also provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16 and 17 of co-pending Application No. 08/814319 in view of *Ferguson*. The Applicants will address these rejections

when the Patent Office indicates that the claims in the present application include allowable subject matter. The Applicants reserve the right to file a terminal disclaimer, to distinguish the cited references, or to otherwise address the provisional obviousness-type double patenting rejections at a later time.

The present application is now in a condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact the Applicants' representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

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